



**GOA REAL ESTATE REGULATORY AUTHORITY  
DEPARTMENT OF URBAN DEVELOPMENT  
GOVERNMENT OF GOA**

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No.3/RERA/Complaint (135)/2020/368

Date: 06/05/2022

**Jitendra Kumar Agarwal,**

235/P, karle River Ville,

Ward 2, Pulwaddo,

Benaulim, South Goa- 403716.

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**Complainant**

V/s

**1. M/s Umiya Holding Pvt. Ltd.**

**2. M/s Umiya Builders and Developers**

29/3, HM Stafford, 2<sup>nd</sup> Floor,

Seventh Cross, Vasant nagar,

Banglore, Karnataka-560052.

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**Respondents**

**ORDER**

**Dated:06/05/2022**

This order disposes of the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') filed against the respondents in respect of the project "UMIYA MERCADO" wherein the complainant has prayed the Authority to direct the respondents to execute sale deed and form a society.

2. It is the case of the complainant that an agreement for construction and sale was entered into and executed on 11/12/2015 between the respondents herein

and the predecessor in title of the complainant, Mr. Arun Kumar Agarwal who was the original purchaser but due to inadvertence, the said agreement wrongly mentioned the shop number, shop area and consideration amount and therefore a Deed of Rectification to the said agreement was executed on 29/03/2017 which was duly registered. According to the complainant, the said original purchaser assigned the said commercial shop to the complainant by a Tripartite Deed, which was an agreement for assignment and sale dated 30/03/2017. By virtue of the said agreement dated 30/03/2017, the said commercial shop bearing No.104 admeasuring 133.80 sq. mtrs. of super built area along with outside seating area of 26.2 sq. mtrs, situated on the first floor in building block No.II of Umiya Mercado was agreed to be purchased by the complainant for a consideration of Rs. 85,51,800/- (Rupees Eighty Five Lakhs Fifty One Thousand Eight Hundred only).

3. It is stated by the complainant that out of the total consideration of Rs.85,51,800/-, an amount of Rs.5,57,425/- (Rupees Five Lakhs Fifty Seven Thousand Four Hundred and Twenty Five only) which was initially paid by the Assignor to the respondents was to be deducted from the consideration amount by the complainant and was to be directly paid to the Assignor/ original purchaser.
4. The complainant states that as per clause 1 (page 8) of the Deed of Rectification dated 29/03/2017, it was agreed that the principal Agreement for Construction and Sale dated 11/12/2015 is valid, subsisting and binding between the parties thereto and that as per clause 29 of the said Agreement, the Assignor confirmed and agreed that he shall transfer and assign in favour of the Assignee/ the complainant, "all right, title, interest, claim and lien in

the said shop”, thereby incorporating the entire principal Agreement dated 11/12/2015 in the Agreement dated 30/03/2017 and that the respondent is also signatory to the said agreements.

5. According to the complainant, he complied with all the terms and conditions of the said principal Agreement and has fully paid the entire consideration amount to the respondents as per the schedule.
6. The complainant has stated that at the time of booking the said commercial shop, the respondents represented to the complainant that the possession of the said commercial shop will be handed over to the complainant within 24 months from the date of executing the agreement subject to an extension of six months and after obtaining occupancy certificate from the competent authorities, however the respondents handed over the possession of the commercial shop on 18/09/2020 i.e. after a delay of 27 months and 7 days for which delay, the respondents are liable to pay interest.
7. It is further stated by the complainant that in the agreement it was agreed between the parties that the annual maintenance charges and other society expenses for the commercial shop would be Rs.84,136/-, however the respondents in breach of the said agreement has now demanded a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) without any reasonable basis.
8. According to the complainant, the respondents have failed and neglected to constitute a Cooperative society/ Association of Persons or such other entity despite handing over the possession of the units to the majority of the allottees. It is submitted that the formation of the said entity/society is

specifically provided in clause 7 (W) (XIX) of the said Agreement for sale dated 11/12/2015 and as per clause 7 (W) (XXII) of the Agreement the respective purchasers will be solely responsible and liable with respect to the common amenities of Umiya Mercado and further as per clause 7 (W) (III) it is the duty of the respondents to assist the purchasers in forming the Cooperative society or any other entity and therefore the respondents are not entitled to charge any amount from the complainant towards the maintenance fee and it is the duty and liability of the respondents to form the society/ entity for the maintenance of the plot and common areas of Umiya Mercado.

9. The complainant has mentioned that as per clause 7 (W) (XVIII), the respondents have already taken from the complainant the amount pertaining to the formation of the said society, the details of which are mentioned in the said Agreement dated 11/12/2015 and after receiving the said amount, the respondents cannot refuse to perform their part of the obligation under the said Agreement.
10. It is further stated by the complainant that the respondents have also taken from him the maintenance fees for the period prior to handing over the possession of the premises to the complainant but the respondents are claiming GST charges also on the amount of maintenance fees paid by the complainant on the ground that the respondents are carrying out the maintenance of the premises and not the society, however, according to the complainant the aforesaid cannot be a ground for the respondents to charge additional amount as it is solely on account of the inaction on the part of the respondents that the society is not formed and as such the complainant cannot



be made liable to pay more than what was agreed at the time of the execution of the Agreement for sale

11. It is further stated by the complainant that there is no provision in the Agreement for sale to increase the amount payable as maintenance and the increase if at all can be done only after the society is formed and all the members decide in favour of the same and therefore the respondents cannot burden the complainant with their unilateral decisions after the expiry of the period for which the respondents were authorized to maintain the premises and hold the amount already paid to them in trust.

12. The complainant has stated that the respondents have failed to execute the sale deed of the commercial shop in favour of the complainant along with the undivided proportionate title in the common areas and therefore the respondents have violated Section 11 (4)(f) of the Act. According to the complainant, the respondents have also failed to hand over the necessary documents, plans including that of the common areas after handing over the possession of the commercial shop and other units to the allottees. Thus according to the complainant, the respondents are liable to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation to the complainant and further liable to execute the Conveyance Deed of the commercial shop in favour of the complainant, to form a society/ Association of Persons or any other entity and hand over all the documents including books of accounts/ electronic accounting formats related to the maintenance accounts, plans including that of the common areas to the society members. It is stated that the respondents are liable to pay penalty for violation of Section 11(4) (e),

11(4) (f) and Section 17(1) of the Act and further imposition of a penalty of 5% of the project cost as per Section 61 of the Act.

13. Reply has been filed by the respondents wherein it is stated that the complainant has approached this Authority with unclean hands and that the Agreement for sale was entered upon by the respondents with the brother of the complainant by name Mr. Arun Kumar Agarwal. The respondents have denied that an amount of Rs.5,57,425/- (Rupees Five Lakhs Fifty Seven Thousand Four Hundred and Twenty Five only) was to be deducted from the consideration amount
14. The respondents have submitted that the representative of the respondents were in continuous touch with the complainant keeping the complainant updated about the progress of the construction and shortage of sand and other raw materials from time to time.
15. The respondents have stated that though the annual maintenance charges and other expenses of the commercial shop were initially decided as Rs. 84,136/-, however, subsequently the actual expenses for looking after the maintenance of the said building increased and even the Agreement speaks of the authority of the respondents to increase the same.
16. Regarding the formation of society, it is stated by the respondents that only four units are sold in the said building out of 35 units and therefore to keep the standard of maintenance and to avoid any risk to the life and property, the respondents are maintaining the said complex under their supervision, as for

the formation of the society, 50% of the members are required to sign the bye laws and required documents.

17. Regarding the sale deed, the respondents have submitted that the draft of the same has already been sent to the complainant through email but the complainant want changes in the said draft and are not resolving the issue amicably and therefore the complainant is delaying the execution of the sale deed.
18. Copies of documents were filed by the parties. Though both the parties were directed to file affidavits in support of their cases, however only the complainant filed his affidavit and no affidavit was filed on behalf of the respondents. In his affidavit the complainant has reiterated the aforesaid facts of his case and the aforesaid prayers.
19. Written submissions were filed by Ld. Advocate S. Mordekar for the complainant and oral arguments were also advanced by the said Advocate, whereas the Advocate for the respondents did not appear either to file affidavits of the respondents or to argue the matter.
20. In the Agreement for Assignment and Sale dated 30/03/2017 it is mentioned in para 8 that “the BUILDER/ CONFIRMING PARTY shall complete the SAID SHOP within 24 months from the date of signing this agreement, subject to an extension of further 6 months, and after obtaining the occupancy certificate from the competent authorities, handover its delivery to the ASSIGNEE; PROVIDED, all the amounts due and payable by the ASSIGNEE under this agreement are paid by the ASSIGNEE to the ASSIGNORS”. From the

aforesaid para it is clear that the Vendor/ Builder had to “**complete**” the commercial shop within the outer limit of thirty months from the date of signing the said agreement and though no specific date is mentioned for delivery of its possession, however, possession was to be delivered after obtaining the occupancy certificate. In the instant case, no occupancy certificate is produced on record by any of the parties, so as to know its date. **Moreover, in the online complaint, the complainant has not prayed for any statutory interest on the delayed possession of the commercial shop to him** and the online supplementary complaint filed before this Authority is not signed and verified by the complainant. Hence, the aforesaid relief of statutory interest on the delay of giving possession, if any, as prayed by the complainant cannot be granted and hence rejected.

21. Regarding the maintenance of the premises and the maintenance charges, there are specific terms in the said Agreement for Assignment and Sale dated 30/03/2017 and **Para 11** therein states as follows:-

“From the date of the occupancy certificate for the respective premises, the responsibility/liability for maintenance of the premises (including the said shop) in UMIYA MERCADO shall be of the respective ASSIGNEE and the responsibility /liability with respect to the common amenities of UMIYA MERCADO and looking after the upkeep thereof shall be solely that of the respective ASSIGNEE”

From the aforesaid term of the agreement it is clear that after obtaining the occupancy certificate, the responsibility/ liability for maintenance of the premises/ the said shop and also of the common amenities is solely on the complainant and the said responsibility/ liability is no more on the





respondents. Thus, the stand taken by the respondents in the reply to the complaint to the effect that “to keep up the standard of maintenance and the building and to avoid any kind of risk to the life and property of the purchaser, the respondents are bound to maintain the said complex under their supervision and through professionals” is contrary to the said agreement.

**22. Para 17** of the said agreement also casts duty on the complainant to maintain the said shop and common areas from the date of possession and in the instant case the date of possession is 18/09/2020. The said para 17 is reproduced hereunder:-

“The ASSIGNEE shall, from the date of possession, maintain the SAID SHOP, the walls, partition walls, sewers, drains, pipes and appurtenances thereto, at cost, in good and tenantable repair and condition and shall not do or suffer to be done anything in or to the SAID SHOP and/or common passage, or the compound or any other common areas, which may be against the conditions or rules or bye-laws of the Village Panchayat or any other Authority and shall attend to and answer and will be responsible for all actions for violation of any such conditions or rules or bye-laws.”

Thus the aforesaid para also clearly shows that from the date of possession, it is the duty and liability of the complainant to maintain the said shop and appurtenances thereto and also its common passages/common areas and in this regard it is not the duty of the respondents herein to maintain the same.

**23. Para 7(xxii)** of the Agreement for Construction and Sale dated 11/12/2015 states as follows:-



“It is clearly agreed and understood that the responsibility/liability with respect to the common amenities of UMIYA MERCADO is exclusively that of the purchasers (including the PURCHASERS herein) of various premises in UMIYA MERCADO and /or of the ENTITY.”

24. It is material to note that in para 29 of Agreement for Assignment and Sale dated 30/03/2017 it is specifically mentioned that “The ASSIGNORS confirm and agree that they shall transferred, assigned in favour of the ASSIGNEE all right, title, interest , claim and lien in the SAID SHOP, thus deeming that the said Agreement for Construction and Sale dated 11/12/2015 duly registered with the Sub-Registrar of Margao under No.5575 was signed by the ASSIGNEE with the said OWNER /BUILDER/CONFIRMING PARTIES”.
25. Thus, after the delivery of possession of said shop to the complainant, it is the duty and liability of the complainant to maintain the same and also the common areas. Para 7(xviii) of the Agreement for Construction and Sale dated 11/12/2015 gives details of the amount to be given by the complainant to the respondents including the maintenance charges before taking possession of the said commercial shop and in the affidavit, the complainant has mentioned that all the charges mentioned therein have been given to the respondents and the respondents have not denied the same by filing any affidavit. In the affidavit the complainant has specifically stated that without prejudice to his rights and contentions in the said shop, the complainant has cleared the arrears and paid an amount of Rs.1,71,048/- (Rupees One Lakh Seventy One Thousand and Forty Eight only) towards the maintenance

charges till the month of September, 2021 as per the rate mentioned in the agreement excluding Goods and Services tax as the amount of maintenance payable to his society is not subjected to tax.

26. Para 7 (xxi) of the said agreement to the effect that “if the VENDOR/BUILDER and /or the ENTITY are of the opinion that the yield on amount as mentioned herein above is not going to be sufficient to meet the upkeep expenses, the VENDOR/BUILDER and/or the ENTITY are authorized to increase the aforesaid deposits with prior intimation to the PURCHASERS and the PURCHASERS shall pay the same within 15 days from the date of such intimation” has to be read in harmony with the other paras mentioned above of the said agreement and therefore the inevitable conclusion is that after giving of possession of the commercial shop to the complainant, the duty and liability of maintaining the commercial shop and its common areas is no more with the vendor/builder/the respondents but the said duty and liability shifts to the complainant/the purchasers and thereafter the respondents have no scope for any increase in the maintenance amount as the respondents have no right over the same after the possession is given to the purchasers. Thus, the respondents cannot demand any further maintenance amount from the complainant who has taken the possession of the commercial shop on 18/09/2020.

27. Regarding the formation of the society/entity, it is clearly mentioned in **para 7(vi)** of the said agreement that **“it is agreed by and between the parties hereto that the VENDOR/BUILDER shall have the ENTITY formed of the premises holders of UMIYA MERCADO as a whole.** However, VENDOR/BUILDER shall have the option to have separate ENTITIES

formed of any part of UMIYA MERCADO or along with the premises holders of any building schemes adjoining or in the vicinity of UMIYA MERCADO or in any other manner as the VENDOR/BUILDER may deem fit” (emphasis supplied). However, **para 7(iv)** states that it is entirely the discretion of the vendor/builder to decide the form of Entity i.e. whether to form a Cooperative society or a limited company or an Association of Persons or any other Entity and **para 7(iii)** states that the vendor/builder shall assist the purchaser in forming such Entity. **Para 7(xv)** of the said agreement further states that **“upon completion of the UMIYA MERCADO, the VENDOR/BUILDER shall convey /get conveyed the said plot along with the buildings thereof and/or UMIYA MERCADO in the name of the ENTITY.”** (emphasis supplied).

28. From **para 7 (xxiv)** of the said agreement it is clear that pending formation of the Entity, the interim arrangement as mentioned in the said agreement was for a maximum period of one year from the date of occupancy certificates for all the building blocks of UMIYA MERCADO, unless extended by the vendor. The said interim arrangement period has already expired and as rightly argued by the Ld. Advocate for the complainant, the respondents have no authority to hold the funds collected from the complainant and other purchasers towards maintenance and keep delaying the formation of the society.

29. Even otherwise **Section 11 (4) (e)** casts the duty and the responsibility on the promoter regarding the formation of the society and the said Section is reproduced herein below:-



**“11. Functions and duties of promoter.-**

(4)The promoter shall-

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;”

Thus, even otherwise, it is the statutory duty of the respondents to form the society/ Association of allottees / Entity, as per law.

**30.** Regarding the execution of sale deed of the said commercial shop in favour of the complainants, it is again the statutory duty of the respondents to execute the same as is clear from **Section 11(4)(f)** of the Act which is reproduced herein below for ready reference:-

“(4) The promoter shall-

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of this Act.”

**31. Section 17** of the Act reads as follows:-

**“17. Transfer of Title.-** (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with



the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.”



In the instant case, the possession of the shop was given to the complainant on 18/09/2020 but till date the sale deed is not executed regarding the said premises.

32. From the premises aforesaid, it is clear that the respondents have not discharged their statutory duties of forming the society/ association as per Section 11(4) (e) and of execution of sale deed in favour of the complainant as per Section 11 (4) (f) read with Section 17 of the Act. For the violation of the above provisions of the Act, **Section 61 of the Act** is attracted and is therefore reproduced herein below:-

**“61. Penalty for contravention of other provisions of this Act.-** If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.”

33. At the time of the registration of the concerned project, the respondents submitted before this Authority “Chartered Accountant certificate” given by Chartered Accountant’s A.D. Ashar and Co., wherein the total estimated cost of the instant Real Estate Project is mentioned as Rs.15,98,25,690/- (Rupees Fifteen Crores Ninety Eight Lakhs Twenty Five Thousand Six Hundred and Ninety only). The above figure of estimated cost of the project has to be taken into consideration while imposing the penalty on the respondents under

Section 61 of the Act, however taking into consideration the facts of the case, lenient view is taken in this regard.

Thus, I pass the following:

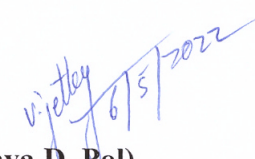
### **ORDER**

The respondents are directed to form a society /Co-operative society/ an association of allottees in respect of the aforesaid project, without any additional charges from the complainant other than those mentioned in the Agreement for Construction and Sale dated 11/12/2015 and Agreement for Assignment and Sale dated 30/03/2017 within two months from the date of this order and handover to its members within the said period all the necessary documents including plans related to the common areas of the said building.

The respondents are further directed to execute a sale deed of the said commercial shop in favour of the complainant along with the undivided proportionate title in the common areas to the association of allottees within two months from the date of this order.

The respondents are further directed to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (e) of the Act within two months from the date of this order and also to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (f) of the Act within two months from the date of this order.

The instant matter is referred to the Adjudicating Officer for deciding compensation, if any.

  
**(Vijaya D. Pol)**  
**Member, Goa RERA**